

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **07-20346**

UNITED STATES OF AMERICA

CIV-GRAHAM

Plaintiff,

vs.

MAGISTRATE JUDGE
O'SULLIVAN

HEALTH MEDICAL THERAPY, INC.,

Defendant.

COMPLAINT FOR DAMAGES & PENALTIES

The United States of America, by and through the undersigned United States

Attorneys, respectfully alleges as follows:

JURISDICTION AND VENUE

1. This complaint is brought by the United States for statutory damages and civil penalties under the False Claims Act, as amended, 31 U.S.C. §§ 3729-3733. This Court has subject matter jurisdiction over this action pursuant to 31 U.S.C. § 3730 and 28 U.S.C. §§ 1331 and 1345.

2. This Court has personal jurisdiction over the defendant pursuant to 31 U.S.C. § 3732(a), as the defendant prepared and submitted false Medicare claims in the Southern District of Florida. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) and 31 U.S.C. § 3732(a), as it is the place where the defendant resides and where a substantial part of the events or omissions giving rise to the claims occurred.

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PARTIES

3. Plaintiff, the United States, brings this action on behalf of the United States Department of Health and Human Services ("HHS"), the Centers for Medicare and Medicaid Services ("CMS") and the Medicare Program.

4. Defendant Health Medical Therapy, Inc. ("HEALTH MEDICAL") is a corporation organized and existing under the laws of Florida.

5. On July 27, 2004, HEALTH MEDICAL filed its Articles of Incorporation with the Florida Secretary of State indicating that it was incorporated on or about July 21, 2004 by ALINA URGELLES. The Articles of Incorporation also indicated that ALINA URGELLES was the sole officer, director and shareholder of HEALTH MEDICAL and was its Registered Agent. HEALTH MEDICAL represented to the State of Florida in its Articles of Incorporation that its business address was 6595 N.W. 36th Street, Suite 309, Virginia Gardens, Florida 33166.

6. On April 8, 2005, HEALTH MEDICAL filed its first amendment to its Articles of Incorporation with the Florida Secretary of State indicating that JOHN KENNETH LENIHAN replaced ALINA URGELLES as the sole officer, director and shareholder of HEALTH MEDICAL, effective March 7, 2005. This first amendment also indicated that the business address of HEALTH MEDICAL changed to 4659 West Flager Street, Miami, Florida 33134.

7. On January 6, 2006, HEALTH MEDICAL filed its second amendment to its Articles of Incorporation with the Florida Secretary of State indicating that JOSE A. GUTIERREZ, JR. replaced JOHN KENNETH LENIHAN as the sole officer, director and shareholder of HEALTH MEDICAL effective December 16, 2005. This second

amendment also indicated that MANUEL R. LOPEZ, ESQ. replaced ALINA URGELLES as the Registered Agent of HEALTH MEDICAL.

8. On June 21, 2006, HEALTH MEDICAL filed its third amendment to its Articles of Incorporation with the Florida Secretary of State indicating that LAZARO M. CHAPLE replaced JOSE A. GUTIERREZ, JR. as the sole officer, director and shareholder of HEALTH MEDICAL. This third amendment also indicated that LAZARO M. CHAPLE replaced MANUEL R. LOPEZ, ESQ. as its Registered Agent.

THE MEDICARE PROGRAM

9. Except as otherwise specifically noted, the statements below describe aspects of the Medicare Program and other facts during the entire period relevant to this action, *i.e.*, from January 7, 2006 through April 26, 2006.

10. Medicare is a federal health insurance program which provides coverage for people age 65 or older and for certain disabled people. Medicare is financed by federal funds including funds from payroll taxes and premiums paid by beneficiaries.

11. HHS is responsible for the Medicare program. CMS is the component agency of HHS which administers and supervises the Medicare program.

12. Various entities are under contract to provide services to CMS. These services include processing and paying Medicare claims, and safeguarding the integrity of the Medicare program. Entities that provide services to CMS include First Coast Service Options ("First Coast").

13. The Medicare program is divided into different "parts." "Part A" of the Medicare program is not at issue in this case.

14. “Part B” of the Medicare program, which is involved in this case, covers, in relevant part, certain drugs that are administered in an outpatient medical setting either through infusion or injection (“Part B drugs”).

15. Payments under the Medicare program are often made directly to a physician or provider of health care services, rather than to the patient (the “beneficiary”). This occurs when the provider accepts assignment of the right to payment from the beneficiary. In that case, the provider submits the claim to Medicare for payment, either directly or through a billing company.

16. In order to be eligible to file a claim for payment from the Medicare Program, a physician or a clinic must submit an application (Form 855B) to obtain a provider number. In the application, the clinic agrees to abide by all Medicare laws, regulations, and program instructions applicable to health care clinics. Further, the clinic certifies that it understands that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, applicable program instructions and on the clinic’s compliance with all applicable conditions of participation in Medicare.

17. After obtaining a provider number, a clinic then submits or causes the submission of claims to an entity which processes those claims for CMS. For example, in Florida, claims for Part B drugs are submitted to First Coast.

18. When a claim is submitted, the clinic certifies that the contents of the claim are true, correct and complete, and that the claim was prepared in compliance with the laws and regulations governing the Medicare program.

19. A clinic, such as the defendant, seeking reimbursement from First Coast must meet certain obligations. These obligations are to:

- a) bill Medicare for only reasonable and necessary medical services. 42 U.S.C. § 1395y(a)(1)(A);
- b) not make false statements or misrepresentations of material facts concerning requests for payment under Medicare. 42 U.S.C. §§ 1320a-7b(a)(1) and (2), 1320a-7, 1320a-7a; 42 C.F.R. § 1001.101(c)(1);
- c) provide economical medical services, and then, only where medically necessary. 42 U.S.C. § 1320c-5(a)(1);
- d) assure that such services are not substantially in excess of the needs of such patients. 42 U.S.C. § 1320a-7(b)(6)(B); and
- e) not submit or cause to be submitted bills or requests for payment substantially in excess of the provider's costs. 42 U.S.C. § 1320a-7(b)(6)(A); 42 C.F.R. § 1001.101(c)(2); HCFA Carrier Manual § 14006.1.

Other sections of the United State Code and Code of Federal Regulations reiterate these obligations.

20. In order to bill the Medicare program for services purportedly rendered, HEALTH MEDICAL submitted a Form 1500 (which is a claims form) to First Coast. When a Form 1500 is submitted, usually in electronic form, the provider certifies that the contents of the form are true, correct, complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare program. The information in the form, which includes the beneficiary's name, the Part B drugs furnished, the provider number of the entity that renders the Part B drugs, and the referring physician, is the basis for the payment to the provider.

THE CLINIC

21. HEALTH MEDICAL received a provider number (K9821) from the Medicare Program on August 1, 2005.

22. Once it received a provider number, HEALTH MEDICAL was able to directly bill Medicare for covered and reimbursable Part B drugs and to be paid directly from Medicare for such Part B drugs.

23. Between February 22, 2006 and April 26, 2006, HEALTH MEDICAL submitted approximately 2189 claims to Medicare for Part B drugs totaling \$9,043,195, which HEALTH MEDICAL claimed to have provided by injection to Medicare beneficiaries between January 7, 2006 and April 14, 2006.

24. The claims submitted by HEALTH MEDICAL referenced in paragraph 21 resulted in it being paid \$2,471,788.69 by the Medicare program.

25. The Part B drugs billed to Medicare by HEALTH MEDICAL by injection include methylprednisolone acetate, irinotecan, and lymphocyte immune globulin.

THE FRAUDULENT SCHEME

26. According to the claims submitted by HEALTH MEDICAL, Dr. Amado was the referring physician for all of the Part B drug claims submitted to Medicare by HEALTH MEDICAL.

27. Dr. Amado is the medical director for five clinics in the greater Miami area.

28. Dr. Amado has no knowledge of HEALTH MEDICAL as a health care provider, and, does not currently and at no time in the past, was affiliated with HEALTH MEDICAL.

29. Dr. Amado did not provide medical services or prescribe or refer any medical supplies or equipment, including Part B drugs, to the Medicare beneficiaries for dates of service between January 7, 2006 and April 14, 2006 whose claims make up the above referenced \$9,043,195.

30. Dr. Amado has no knowledge of and never treated any of the Medicare beneficiaries for dates of service between January 7, 2006 and April 14, 2006 for which HEALTH MEDICAL submitted claims to the Medicare program for the above referenced \$9,043,195.

31. The above referenced \$9,043,195 in claims that HEALTH MEDICAL submitted to the Medicare program and that listed Dr. Amado as the referring physician were completely fabricated claims. All of the \$2,471,788.69 paid by the Medicare program to HEALTH MEDICAL for these claims was the result of false claims.

COUNT I

(False Claims Act: Presentation of False Claims)
(31 U.S.C. § 3729(a)(1))

32. The United States re-alleges and incorporates by reference paragraphs 1 through 31 of this complaint as though fully set forth herein.

33. This is a claim for statutory damages and penalties under the False Claims Act, 31 U.S.C. §§ 3729(a)(1), against defendant for knowingly presenting or causing to be presented, false or fraudulent claims to the United States.

34. From February 22, 2006 and April 26, 2006, defendant presented or caused to be presented such claims for payment to the United States knowing such claims were false or fraudulent, or with reckless disregard or deliberate ignorance of the truth or falsity of the claims.

35. By virtue of the false or fraudulent claims presented or caused to be presented by the defendant, plaintiff United States is entitled to statutory damages to be determined at trial, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each false claim presented or caused to be presented.

COUNT II

(False Claims Act: Making or Using False Record
or Statement to Cause Claim to be Paid)
(31 U.S.C. § 3729(a)(2))

36. The United States re-alleges and incorporates by reference paragraphs 1 through 35 of this complaint as though fully set forth herein.

37. This is a claim for statutory damages and penalties under the False Claims Act, 31 U.S.C. §§ 3729(a)(2), against defendant for knowingly making, using, or causing to be made or used, false records or statements to get false or fraudulent claims paid or approved by the United States.

38. Defendant knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by the United States.

39. By virtue of the false records or false statements presented by the defendant, plaintiff United States is entitled to statutory damages to be determined at trial, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each false claim presented or caused to be presented.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that:

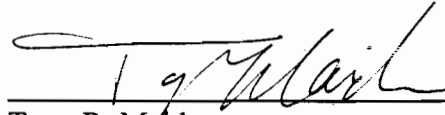
That judgment be entered in its favor and against the defendant HEALTH MEDICAL for statutory damages and for civil penalties of between \$5,500 and \$11,000

for each false claim, plus interest and costs, and for such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

R. ALEXANDER ACOSTA
United States Attorney
Southern District of Florida

JEFFREY W. DICKSTEIN
Assistant United States Attorney

A handwritten signature in dark ink, appearing to read "Tony R. Maida", is written over a horizontal line.

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Dated: February 9, 2006